

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs April 25, 2006 Session

STATE OF TENNESSEE ex rel. NICOLE M. BUSS v. JAMES M. FLINN

Appeal from the Chancery Court for Anderson County
No. 02CH2796 William E. Lantrip, Chancellor

No. E2005-00468-COA-R3-CV - FILED MAY 15, 2006

Nicole M. Buss (“Mother”) and James M. Flinn (“Father”) were divorced in 2002 by order of the Campbell County General Sessions Court. The final judgment of divorce designated Mother the primary residential parent of the parties’ minor child, and set the amount of Father’s child support arrearages as well as his current child support payment. After this Court remanded this case in the first appeal of this matter, the Campbell County General Sessions Court transferred the case to the Anderson County Chancery Court. Father later was found in civil contempt for willfully violating a direct order of the Chancery Court. Father appeals claiming the Chancery Court lacked subject matter jurisdiction to enforce the order of the Sessions Court and that the Chancery Court erred in finding him in civil contempt. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Chancery Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

James M. Flinn, *pro se* Appellant.

Paul G. Summers, Attorney General and Reporter, and Warren Jasper, Assistant Attorney General, Nashville, Tennessee, for the Appellee State of Tennessee *ex rel.* Nicole M. Buss.

OPINION

Background

This is the second occasion we have had to consider an appeal in this domestic litigation. The underlying facts were set forth in our Opinion in the first appeal, from which we quote liberally:

Mother filed a Complaint for Divorce in the General Sessions Court for Campbell County in May of 2001. The parties resided together in Campbell County at the time of separation. Father still lived in Campbell County when the Complaint was filed. Mother and the parties' five month old daughter had moved to Anderson County by that time. Both parties had been married once before, and Mother had one child, a daughter, from the previous marriage. As grounds for divorce, Mother claimed Father was guilty of inappropriate marital conduct. Alternatively, Mother asserted that irreconcilable differences had arisen between the parties. Mother sought primary residential custody of the minor child and filed a proposed Parenting Plan which provided to Father what Mother considered appropriate visitation.

Father's answer to the complaint denied that he engaged in any inappropriate marital conduct or that irreconcilable differences had arisen between the parties. Father further denied that Mother was entitled to primary care and custody of their child, asserting both he and Mother were fit and proper persons to care for the child. Father sought "equal co-parenting" time. Approximately six months after answering the Complaint, Father filed a counterclaim for divorce, asserting Mother was guilty of inappropriate marital conduct or, alternatively, that irreconcilable differences had arisen between the parties.

Father was represented by counsel when Father's answer and counterclaim were filed. By April of 2002, Father was unemployed, was no longer represented by counsel, and was living in Roane County. Acting *pro se*, Father filed a motion seeking to have the divorce proceedings transferred from Campbell County to Anderson County pursuant to Tenn. Code Ann. § 36-5-3004. Mother objected to the transfer, arguing Tenn. Code Ann. § 36-5-3001 *et seq.*, applies only to the transfer of cases involving the enforcement or modification of an existing judgment concerning child custody and support. Since there was no such judgment in the present case,

Mother argued the divorce proceedings could not be transferred pursuant to that statute. The Trial Court agreed with Mother and denied Father's motion to transfer.

A trial was conducted on July 17 and 18, 2002. The Trial Court later issued a memorandum opinion from the bench which was transcribed and incorporated into the final judgment. The Trial Court granted a divorce to Mother based on Father's inappropriate marital conduct and designated Mother as the primary residential parent of the minor child. Father was granted visitation every other weekend, alternating holidays, three days over the Christmas holiday, and every other spring break when the child is of school age.

Buss-Flinn v. Flinn, 121 S.W.3d 383, 384-85 (Tenn. Ct. App. 2003)(hereafter “*Flinn I*”).

Following entry of a final judgment, Father timely filed his first appeal to this Court and raised three issues. First, Father claimed the Campbell County Sessions Court erred when it refused to transfer the case to Anderson County. Father’s second issue was his claim that the Sessions Court erred when it granted a divorce to Mother. Father’s final issue was his claim that the Sessions Court erred when it designated Mother the primary residential parent of the parties’ minor child or, in the alternative, that it erred in the amount of co-parenting time Father was awarded. *Id.* at 387. We affirmed the Sessions Court’s judgment in all respects. *Id.* at 390-91. Father then appealed our judgment to the Tennessee Supreme Court. On October 27, 2003, the Supreme Court denied Father’s application for permission to appeal. *Id.* at 383.

The only issue raised in the first appeal which is directly relevant to the present appeal involves the refusal of the Sessions Court to transfer the case to Anderson County. The relevant statutory provisions pertaining to Father’s request for a transfer are Tenn. Code Ann. §§ 36-5-3001 - 3003, which provide:

§ 36-5-3001. Purposes and construction of part and limitation of scope of part. - (a) The purpose of this part is to provide procedures for the intercounty enforcement and modification of child support and child custody cases and shall be liberally construed to effectuate its purposes.

(b) The provisions for transfer in this part shall not apply to cases in any court regarding petitions for dependency and neglect, delinquency, unruly behavior, terminations of parental rights or adoptions pursuant to titles 36 and 37.

§ 36-5-3002. Part definitions. - As used in this part, unless the context clearly requires otherwise:

(1) “Child's county” means the county in which the child who is subject to a support or custody order resides;

* * *

(7) “Issuing court” means the court that issues a support or custody order or renders a judgment determining parentage or to which a support or custody order has been previously transferred;

* * *

§ 36-5-3003. Transfer of support or custody cases. - (a) Except as provided in § 36-5-3001(b), a case that includes child support or custody provisions may be transferred between counties in this state without the need for any additional filing by the party seeking transfer, and without service of process upon the non-requesting party, by the filing of a request by the requesting party as set forth herein.

(b) Upon receipt of a request, the case must be transferred by the clerk of the issuing court, without order of the court, to a court of competent jurisdiction in the county where the child or children reside if each of the following applies:

(1) Neither the child or children, custodial parent/obligee, nor the non-custodial parent/obligor currently reside in the issuing county; and

(2) The child or children who are subject to the support or custody order currently reside in the county to which the case is to be transferred and have resided there for at least six (6) months....

Father argued in the first appeal that the above statutory provisions applied and, therefore, the Sessions Court was required to transfer the case to Anderson County. At the time Father filed his motion to transfer, the divorce action had been pending only for a short time and there was no final order concerning child support or custody as those were two of the key issues in the then pending litigation. For that reason, we rejected Father’s argument that the case should have been transferred. We stated:

After reading the relevant statutory provisions set forth above, we believe the Legislature intended this statutory scheme to apply only in those cases where a party is seeking to “enforce” or “modify” a

final order of child support or child custody. In fact, the Legislature left no room to quibble as the statute states that “[t]he purpose of this part is to provide procedures for the intercounty enforcement and modification of child support and child custody cases and shall be liberally construed to effectuate its purposes.” Tenn. Code Ann. § 36-5-3001(a). Courts must “presume that the legislature says in a statute what it means and means in a statute what it says” *Mooney v. Sneed*, 30 S.W.3d 304, 307 (Tenn. 2000). In the present case, there was no such final order of child support or child custody until the Trial Court rendered its judgment on July 18, 2002. *The statutory provisions relied on by Father will come into play when, and if, one of the parties seeks to “enforce” or “modify” the portion of the July 18, 2002, final order pertaining to child custody and support, assuming the statutory requirements are met otherwise.* (emphasis added).

Flinn I, 383 S.W.3d at 388.

While the first appeal was pending, on December 2, 2002, the State of Tennessee, on Mother’s behalf, filed a Petition for Full Faith and Credit and to Enforce Child Support in the Anderson County Chancery Court. In this petition, the State claimed that pursuant to the final judgment entered by the Campbell County General Sessions Court, Father was required to: (1) pay \$1,600 in child support arrearages incurred from the birth of the child through July of 2001; (2) pay \$1,041.92 in child support arrearages incurred from April 2002 through the second week in July of 2002; (3) pay \$301 per month in current child support; (4) pay Mother \$958.31, representing one-half of the child’s then outstanding medical bills; and (5) pay Mother \$661.50 in reimbursement for Mother obtaining health insurance to cover the child. The State claimed that Father was in arrears a total of \$3,694.92 in child support and that Father still had not reimbursed Mother the \$1,619.81 for Father’s one-half of the outstanding medical bills and the full amount of the health insurance premiums paid by Mother. The State requested, among other things, that the Anderson County Chancery Court give full faith and credit to the final judgment of the Campbell County General Sessions Court and that Father be found in willful contempt of court.

Father filed a motion to dismiss the State’s petition claiming the Anderson County Chancery Court lacked subject matter jurisdiction to grant the relief sought because proceedings still were pending in the Campbell County General Sessions Court and were, in fact, on appeal to this Court.

On March 31, 2003, the Anderson County Chancery Court entered an order stating, in pertinent part, as follows:

The Court finds that the divorce order in the General Sessions Court for Campbell County ... is now pending appeal.... This

[C]ourt therefore has no authority to enforce the order [from] Campbell County while litigation and an appeal is currently pending there. However, the Court finds it appropriate to continue this matter until Campbell County General Sessions Court renders a final order on all pending litigation, and the request for appeal of the divorce order is finally resolved. The Court finds that any immediate action which may be necessary must be handled in Campbell County, and that the pendency of this action would not prohibit any similar action in Campbell County.

As noted previously, on October 27, 2003, the Tennessee Supreme Court denied Father's application to appeal the decision of this Court, and our mandate was issued on November 18, 2003. Thereafter, on March 12, 2004, the General Sessions Court for Campbell County entered an order transferring the case to the Anderson County Chancery Court. The order entered by the Campbell County General Sessions Court specifically found that:

[Mother] has been a resident of Norris, Anderson County, for more than six (6) months and is currently a resident of Norris and that the parties' minor child, has been residing with her in Norris for more than (6) months and the child is currently a resident of Norris, Tennessee. The Court finds that [Father] is a resident of Roane County and has been residing there for more than six (6) months and that neither party has a nexus to Campbell County. It appears to the Court that Anderson County would be the appropriate venue for any post divorce litigation.

A hearing was conducted in the Anderson County Chancery Court on January 7, 2005, with Mother, Father, and the State in attendance. At this hearing, the Chancery Court specifically allowed enrollment of the Campbell County General Sessions Court judgment. The Chancery Court also ordered Father to pay, in addition to his regular monthly child support payment, an additional \$150.00 per month toward the arrearage. The Chancery Court uses a document titled "Exhibit A" which it requires litigants in certain domestic cases to fill out. This "Exhibit A" requires a party to provide statistical information about themselves and to inform the court where they are employed, their annual income, etc. At the very beginning of the "Exhibit A" a party is given the following cautionary instruction: "FAILURE TO APPROPRIATELY UPDATE THIS INFORMATION OR GIVING FALSE INFORMATION COULD LEAD TO BEING CITED FOR CONTEMPT OF COURT OR HAVING A DEFAULT JUDGMENT ENTERED AGAINST YOU." The Chancery Court gave Father "Exhibit A" to fill out. According to the Chancery Court's order entered after the hearing, this is what happened next:

The Court ordered [Father] to complete the exhibit A sheet containing statistical information required by law and when [Father] began to leave after the hearing the Court specifically ordered

[Father] to stay and complete the form. [Father] stated he would complete it in the hallway, and left the room. [Father] did not complete the form and left the building instead. The State was going to explain arrearage calculations but [Father] did not remain for this either.

Because of Father's direct disobedience to the Chancery Court, the Chancery Court entered an order finding Father to be in civil contempt and ordering Father jailed until such time as he purged himself of contempt. Father apparently completed the Exhibit A form in his jail cell and was thereafter released from jail.

Father filed a notice on appeal and filed a Statement of the Evidence with the Chancery Court. The State objected and requested the Chancery Court to order Father to supplement the Statement of the Evidence as it was incomplete. The Chancery Court then entered an Order finding that the Statement of the Evidence as presented by Father was incomplete. The Chancery Court ordered Father to supplement the Statement of the Evidence with testimony introduced at the hearing relating to arrearages or to provide a transcript of the hearing. Father then filed a very brief supplement to the Statement of Evidence which provided only that Father agreed he was in arrears and that he could pay \$150.00 per month toward the arrearage.

Father appeals claiming the Anderson County Chancery Court lacked subject matter jurisdiction to enforce the order of the Campbell County General Sessions Court. Father also claims the Chancery Court erred when it found him in civil contempt. Finally, Father claims the Chancery Court denied him due process when it registered and enforced the order of the Campbell County General Session Court.

Discussion

The factual findings of a trial court are accorded a presumption of correctness, and we will not overturn those factual findings unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). With respect to legal issues, our review is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

In arguing that the Chancery Court lacked subject matter jurisdiction, Father essentially claims that the Campbell County General Sessions Court never transferred the case to Anderson County or otherwise relinquished its jurisdiction. Although the Sessions Court clearly had transferred the case, Father made this argument in his brief because there was nothing in the record on appeal showing that there had been a transfer. However, the State filed a motion to supplement the record on appeal with a copy of the Sessions Court order transferring the case to Anderson County Chancery Court. Because there was no dispute that the order was legitimate and had in fact been entered by the Sessions Court, we granted the State's motion.

The real issue is simply whether the provisions of Tenn. Code Ann. § 36-5-3001 *et seq.*, were complied with. It is undisputed that the Campbell County General Sessions Court granted a request for a transfer after specifically finding that Mother and the parties' child had been living in Anderson County for over six months, and that Father had been living in Roane County for over six months. Thus, it is clear that the provisions of Tenn. Code Ann. § 36-5-3001 *et seq.*, were complied with. Even though the Anderson County Chancery Court may have lacked subject matter jurisdiction when the action was filed initially, it nevertheless obtained that jurisdiction once the case was properly transferred according to the directives of Tenn. Code Ann. § 36-5-3001 *et seq.* Therefore, once the case was transferred properly, the Anderson County Chancery Court had subject matter jurisdiction to enforce the Sessions Court order and also to order Father to pay arrearages and establish a payment schedule for same. Father's first issue is without merit.

Father's second issue is his claim that the Chancery Court erred when it found him in civil contempt. "Appellate courts review a trial court's decision to impose contempt sanctions using the more relaxed 'abuse of discretion' standard of review." *McDowell v. McDowell*, No. M2000-00164-COA-R3-CV, 2001 WL 459101, at * 5 (Tenn. Ct. App. May 2, 2001), *no appl. perm. appeal filed* (quoting *Sanders v. Sanders*, No. 01A01-9601-GS-00021, 1997 WL 15228, *3 (Tenn. Ct. App. 1997) and citing *Hawk v. Hawk*, 855 S.W.2d 573, 583 (Tenn. 1993)).

As pertinent to this appeal, Tenn. Code Ann. § 29-9-102(3) authorizes courts to "inflict punishments for contempts of court" in situations involving the "willful disobedience or resistance of any ... party ... to any lawful writ, process, order, rule, decree, or command of such courts...." Father simply claims that the Chancery Court had no authority to hold him in contempt for violating an order of the Sessions Court. This argument entirely misses the point. The Chancery Court did not hold Father in contempt for violating an order of the Sessions Court. Rather, the Chancery Court held Father in contempt for violating a direct order of the Chancery Court requiring Father to complete Exhibit A. The facts do not preponderate against the Chancery Court's conclusion that Father was in willful contempt of its order. The Chancery Court did not abuse its discretion when it found Father in civil contempt.

The final issue is Father's claim that he was denied due process. In his brief on appeal, Father admits that he "did not raise the issue of due process in the trial court...." We will not consider issues raised for the first time on appeal. *See City of Cookeville ex rel. Cookeville Regional Med. Ctr. v. Humphrey*, 126 S.W.3d 897, 905-06 (Tenn. 2004) (noting the general rule that "questions not raised in the trial court will not be entertained on appeal") (quoting *Lawrence v. Stanford*, 655 S.W.2d 927, 929 (Tenn. 1983)). Therefore, we consider this issue waived.

Conclusion

The judgment of the Anderson County Chancery Court is affirmed, and this cause is remanded to the Chancery Court for collection of the costs below. Costs on appeal are assessed against the Appellant, James M. Flinn and his surety, if any.

D. MICHAEL SWINEY, JUDGE